

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY *AS* D.C.
05 OCT 28 PM 3:32

THOMAS M. GOULD
CLERK, U.S. DISTRICT COURT
W/D OF T., MEMPHIS

EDWARD SMITH, as Conservator
of SUE NELL SMITH, an
incapacitated person,

Plaintiff,

vs.

No. 05-2106 BV

KINDRED NURSING CENTER LIMITED
PARTNERSHIP d/b/a Cordova
Rehabilitation and Nursing
Center; KINDRED HEALTHCARE
SERVICES, INC.; and KINDRED
HEALTHCARE OPERATING, INC.;
NEICIE J. MCKINION, in her
capacity as Administrator of
Cordova Rehabilitation and
Nursing Center; KATHERINE A.
BERRY, her capacity as
Administrator of Cordova
Rehabilitation and Nursing
Center; FRANK D. LAMIER, in
his capacity as Administrator
of Cordova Rehabilitation and
Nursing Center; JAMES W.
FREEMAN, in his capacity as
Administrator of Cordova
Rehabilitation and Nursing
Center,

Defendants.

ORDER GRANTING DEFENDANTS' MOTION TO COMPEL PLAINTIFF'S FULL
COMPLIANCE WITH RULE 26(a)(2)(B) AND TO AMEND THE SCHEDULING
ORDER TO ALLOW DEFENDANTS ADDITIONAL TIME FOR THEIR DISCLOSURE OF
EXPERT TESTIMONY

Before the court is the October 24, 2005 motion of the
defendants to strike the plaintiff's initial Rule 26(a)(2)

disclosure of expert witnesses. In the alternative, the defendants ask the court to compel the plaintiff to fully comply with Rule 26(a)(2)(B) and to amend the scheduling order to provide that the defendants' disclosure of Rule 26 expert information will be due thirty (30) days after the receipt of such proper disclosures from the plaintiff. Finally, the defendants ask the court to award expenses and attorney fees.


The certificate of consultation filed with the defendants' motion indicates that, although the plaintiff does not agree to the motion to strike, the plaintiff does agree to amend the scheduling order to allow the plaintiff additional time to serve an expert disclosure in compliance with Rule 26(a)(2)(B) and to provide that the defendants' disclosure of Rule 26 expert information will be due thirty (30) days after the receipt of such disclosure.

Because the parties so agree, the defendants' motion to compel the plaintiff's full compliance with Rule 26(a)(2)(B) is granted. The plaintiff is directed to provide the defendants with a disclosure of expert witnesses that fully complies with Rule 26(a)(2)(B) by Friday, November 11, 2005. The scheduling order is hereby amended to reflect that the defendants' disclosure of Rule 26 expert information is due thirty (30) days after service of the plaintiff's disclosures.

The defendants' motion to strike the plaintiff's expert

disclosures is therefore denied. The defendants' request for attorney fees and expenses is also denied. Each party shall bear its own fees and expenses.

IT IS SO ORDERED this 28th day of October, 2005.

A handwritten signature in cursive script, reading "Diane K. Vesco", is written over a horizontal line.

DIANE K. VESCOVO

UNITED STATES MAGISTRATE JUDGE



Notice of Distribution

This notice confirms a copy of the document docketed as number 58 in case 2:05-CV-02106 was distributed by fax, mail, or direct printing on October 31, 2005 to the parties listed.

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Honorable J. Breen
US DISTRICT COURT